Group III, claim 19, drawn to a a composition comprising a peptide of the invention set out in claim 13 and an antigen or an antigenic determinant;

Group IV, claims 20 and 21, drawn to a composition comprising a peptide of the invention set out in claim 13 and an antibody; and

Group V, claims 22-26 and 28, drawn to a method of treating a subject by administering an effective amount of a composition containing a peptide of the invention

In accordance with 37 C.F.R. § 1.499, Applicants elect with traverse group II, drawn to SEQ ID NOs 2, 3, 4, and 5. The requirement is traversed because Applicants do not agree with the Examiner's assessment that the claims "do not relate to a single general inventive concept under PCT Rule 13.1" as set out in the Office Action, page 3, second to last paragraph. All five groups exhibit a unity of invention under PCT Rule 13.2 because there is a technical relationship among the claimed inventions, as they all are related to SEQ ID NOs 2, 3, 4, and 5. The Office Action asserts that all the groups "have no special technical feature", citing WO 95/29701 to Mirelman, *et al.*, published November 9, 1995. This appears to be a rejection on the merits rather than support for a restriction requirement, and in any event the claims in the PCT application reviewed by the EPO examiner were not subject to a unity of invention objection in the Written Opinion, and so the restriction requirement is improper under WIPO rules. Applicants believe they have made a contribution over the prior art for the invention as a whole, directed to the Ctx B and Etx B peptides set out in structurally and functionally similar SEQ ID NOs 2, 3, 4, and 5, and methods of using them.

Thus, the claims have "a community of properties justifying their grouping which [is] not repugnant to principles of scientific classification" under U.S. restriction practice [*In re Harnish*, 631 F.2d 716, 206 U.S.P.Q. 300, 305, (C.C.P.A. 1980)], and are "so linked as to form a single general inventive concept" as set down in PCT Rules 13.2, 13.3, and 13.4. In general, in the U.S. an Applicant has a "right to define what he regards as his invention as he chooses, so long as his definition is distinct" [*ibid.*]. That court and its successors have

long recognized the advantages to the public interest in permitting Applicants to claim all aspects of the invention so as to encourage the making of a more detailed disclosure of all aspects of their discovery.

> We believe the constitutional purpose of the patent system is promoted by encouraging applicants to claim, and therefore to describe in the manner required by 35 U.S.C. § 112, all aspects of what they regard as their inventions, regardless of the number of statutory classes involved.
> *In re Kuehl*, 177 U.S.P.Q. 250, 256 (C.C.P.A. 1973).

A search of the peptides set out in homologous Group II SEQ ID NOs 2, 3, 4, and 5 should lead to the references applicable to the other groups and should not be an undue burden for examination purposes. Moreover, requiring Applicants to pay filing fees, prosecution costs, issue fees, and maintenance fees for five patents for one invention directed to the use of rho protein inhibitors for axon regeneration *is* an undue burden for Applicants, particularly as they are academic inventors having small entity status. For these reasons, Applicants respectfully request that the requirement for restriction be withdrawn.

If the undersigned can advance the prosecution of this application in any way whatsoever, please call at the number listed below.

Respectfully submitted,

on 25 July 2001 by

MARY M KRINSKY, Reg. No. 32423
79 Trumbull Street
New Haven, Connecticut 06511-3708
(203) 773-9544

electronically last year and determined by the Patent Office *not* to be an undue burden then. In addition, requiring Applicants to pay filing fees, prosecution costs, issue fees, and maintenance fees for at least nine patents for one invention *is* an undue burden for Applicants, who have small entity status.

Applicants were further requested to elect a species of peptide. Applicants strenuously traverse this requirement for the reasons set out above: the independent claims share a community of properties as they all are directed to a small group of closely related short peptide fragments having identical core sequences and functionality. More importantly, there was no bunch of species observed in the first restriction requirement; SEQ ID NOs 2 to 5 were grouped together. The sudden election request among species is as inconsistent as the restriction requirement. But it is much more egregious, as it subdivides what was perceived as one species in the same case last year into 36 (2 A-H through 5 A-H). U.S. Patent Office practice in this instance could hardly be less uniform. As required by the rules, however, Applicants elect with strenuous traverse SEQ ID NO: 2, as it's common to all the species.

For these reasons, Applicants respectfully request that this second requirement for restriction be withdrawn.

If the undersigned can expedite prosecution of this application in any way, or assist with any questions or comments about this submission, the Examiner is invited to communicate using the information set out below.

Respectfully submitted

on 13 May 2002 by

MARY M. KRINSKY, Reg. No. 32423
79 Trumbull Street
New Haven, Connecticut 06511-3708
voice: (203) 773-9544
fax: (203) 773-1183
e-mail: mmk@connix.com